

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BRICKLAYERS INSURANCE AND WELFARE FUND, BRICKLAYERS PENSION FUND, BRICKLAYERS SUPPLEMENTAL ANNUITY FUND, BRICKLAYERS AND TROWEL TRADES INTERNATIONAL PENSION FUND, NEW YORK CITY AND LONG ISLAND JOINT APPRENTICESHIP AND TRAINING FUND, INTERNATIONAL MASONRY INSTITUTE, and JEREMIAH SULLIVAN, JR., in his fiduciary capacity as Administrator, BRICKLAYERS LOCAL 1, INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFT WORKERS, and BRICKLAYERS LABOR MANAGEMENT RELATIONS COMMITTEE,

X - 3443 COMPLAINT

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

FILED
CLERK

2012 JUL 12 AM 11:28

IRIZARRY, J.

GO, M.J.

Plaintiffs,

- against -

COSMO INTERIOR & EXTERIOR CONSTRUCTION, INC.,

Defendant.

X

Plaintiffs, by their attorneys, Doar Rieck Kaley & Mack, complaining of the Defendant, Cosmo Interior & Exterior Construction, Inc. ("Cosmo"), allege as follows:

JURISDICTION AND VENUE

1. This is an action against Cosmo brought by various employee benefit funds to enforce the provisions of Sections 515 and 502(g) of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§ 1145 and 1132(g). As to Bricklayers Local 1, International Union of Bricklayers & Allied Craftworkers ("Local 1"), jurisdiction is conferred under Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185.

2. The funds are administered in the Eastern District of New York. Venue is proper under Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

PARTIES

3. Plaintiffs, Bricklayers Insurance and Welfare Fund (of which the Vacation Fund is a part), Bricklayers Pension Fund, Bricklayers Supplemental Annuity Fund, Bricklayers and Trowel Trades International Pension Fund, New York City and Long Island Joint Apprenticeship and Training Fund, and the International Masonry Institute (hereinafter collectively referred to as the "Funds"), are each an "employee benefit plan" within the meaning of Section 3(3) of ERISA, 29 U.S.C. § 1002(3), and a "multiemployer plan" within the meaning of Section 3(37) of ERISA, 29 U.S.C. § 1002(37). Plaintiffs bring this action on behalf, and for the benefit, of the beneficiaries of the Funds.

4. Local 1 is a labor organization within the meaning of Section 301 of the LMRA, 29 U.S.C. § 185.

5. The Labor Management Relations Committee ("LMRC") is established and maintained under Section 302(c)(9) of the LMRA, 29 U.S.C. § 186(c)(9).

6. Defendant Cosmo is, and at all times hereinafter mentioned was, an employer maintaining offices and conducting business in the State of New York.

BACKGROUND

7. Plaintiffs re-allege paragraphs 1 through 6 as if fully set forth herein.

8. Cosmo is party to a collective bargaining agreement ("CBA") with Local 1, under which Defendant agreed to make contributions at specified rates per hour worked to pay for the cost of: (1) pension benefits provided by the Pension Fund, Annuity Fund and IPF; (2) medical benefits provided by the Welfare Fund; and (3) training provided by the JATC and IMI.

9. Under the CBA, Cosmo is also obligated to take after-tax deductions from employee paychecks for the Vacation Fund, which is a component of the Welfare Fund and covered by ERISA, at a specified rate per hour.

10. The CBA also requires Cosmo to transmit after-tax hourly deductions from employee paychecks for: (1) dues (including PACs and Defense Fund) to Local 1 and its parent, the International Union of Bricklayers & Allied Craftworkers, and (2) voluntary contributions to Local 1's Job Targeting Program ("JTP").

11. Shop steward reports show that Cosmo owes Plaintiffs \$42,865.38 for the period October 1, 2011 through February 18, 2012.

ERISA COUNT

12. Plaintiffs re-allege paragraphs 1 through 11 as if fully set forth herein.

13. Cosmo owes the Funds \$38,598.42 in unpaid contributions for hours worked by Local 1 bricklayers from October 2011 to February 2012.

14. Under the CBA and the applicable plan documents for the Funds, liquidated damages of 20% are owed on the unpaid contributions described above in paragraph 13 plus interest at the rate of 10% per annum.

LMRA COUNT

15. Plaintiffs re-allege paragraphs 1 through 14 as if fully set forth herein.

16. Cosmo owes Local 1 and the LMRC \$4,266.96 in unremitted dues checkoffs and unpaid contributions for hours worked by Local 1 bricklayers from October 2011 to February 2012.

17. Interest of 9% per annum is due from Cosmo under the CBA on the amount described above in paragraph 16.

AUDIT COUNT

18. Plaintiffs re-allege paragraphs 1 through 17 of as if fully set forth herein.

19. Pursuant to the terms and conditions of the CBA and the plan documents of the Funds, Cosmo is required, inter alia, to file certain employer contribution reports with Plaintiff Funds. They are further required to permit and cooperate with Plaintiff Funds in the conduct of audits of Defendant's books and records including, but not limited to, payroll, payroll ledgers, computer payroll printouts, W-2 forms, quarterly federal payroll tax returns (forms

WRS-2 and WRS-30), annual federal tax returns, cash disbursements journals, purchase journals, 1099 forms, New York and New Jersey employment records, insurance company reports, supporting checks, ledgers, vouchers and any and all other items concerning payroll. This production includes any certified payrolls of Defendant Cosmo and of any subcontractors retained by Defendant Cosmo, and copies of all contracts between Defendant Cosmo and any subcontractors retained to perform work on Local 1 projects. These requirements are for the purpose of ascertaining the amount of fringe benefits contributions owed to the Funds, contributions owed to the LMRC, and dues owed to Local 1 from Defendant Cosmo, and of verifying the accuracy of the employer contribution reports, if filed.

20. Accordingly, pursuant to the terms and conditions of the CBA, Plaintiffs demand an order requiring Defendant Cosmo to permit and to cooperate with Plaintiffs in the conduct of an audit of Cosmo's books and records for the payroll periods of the weeks beginning July 1, 2008, and continuing through the present time and to pay any delinquencies shown to be due as a result of such audit.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs demand Judgment against Defendant Cosmo under ERISA and the LMRA as follows:

1. a. For unpaid contributions owed to Plaintiff Funds, in the amount of \$38,598.42 (ERISA Section 502(g)(2)(A));
 b. For interest assessed on unpaid contributions at the per annum rate of 10% to be determined at a later date (ERISA Section 502(g)(2)(B));
 c. For 20% liquidated damages assessed on unpaid contributions owed to plaintiff Benefit Funds (ERISA Section 502(g)(2)(C)(ii));
 d. For the costs of filing this action in the amount of \$350 (ERISA Section 502(g)(2)(D));

e. For unpaid contributions and dues owed Plaintiffs Local 1 and LMRC in the amount of \$4,266.96.

f. For interest assessed on delinquent contributions and dues owed Local 1 and the LMRC at the per annum rate of 9% to be determined at a later date.

2. For attorneys' fees and costs of this action (ERISA Section 502(g)(2)(D)).

3. That Defendant Cosmo be directed to comply with its obligations to report and to contribute to Plaintiffs any and all additional reports and contributions due and owing, and to pay the costs and disbursements of this action.

4. Such other legal or equitable relief as this Court deems appropriate, including Judgment for any contributions and/or interest thereon that may accrue subsequent to the filing of this Complaint, as well as any statutory damages resulting therefrom under ERISA.

WHEREFORE, Plaintiffs demand Judgment against Cosmo under ERISA and the LMRA, together with interest and the costs and disbursements of this action.

Dated: New York, New York
July 12, 2012

DOAR RIECK KALEY & MACK

By:

Michael Minnefor
Attorneys for Plaintiffs
217 Broadway, Suite 707
New York, New York 10007
(212) 619-3730